

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

M16 606 PR14

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET No. 74-2523

APR 28 1975

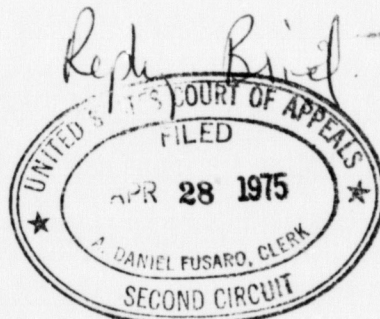
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74-2523

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VINCENT RIZZO,
Petitioner-Appellant

v.

UNITED STATES OF AMERICA,
Respondent-Appellee.
-----X



IN REPLY TO THE GOVERNMENT'S BRIEF: IN RE: TO PETITIONER'S
MOTION, PURSUANT TO TITLE 28, UNITED STATES CODE, SECTION 2255, TO
VACATE HIS JUDGMENT OF CONVICTION AND SENTENCE.

In the Government's Brief on page 3, Statement of Facts. It is stated that petitioner had requested that for sentencing all three cases be referred to one Judge and... The fact remains, it was petitioner's belief that just one plea would be rendered on all three indictments to one Judge, in order that that particular Judge would know all the facts pertaining to the charges in those three indictments. Petitioner's belief is reflected in the Record of his plea in front of the Honorable Judge Frederick vanPelt Bryan on October 9, 1973, before entering his plea to the Honorable Judge Duffy in the case before this Court.

The Government contends that this petitioner was sentenced on January 8, 1974, and received... The fact remains, that this petitioner was already incarcerated in the Atlanta Penitentiary on January 8, 1974. The last date that this petitioner was in court in relation to this case, and the other two cases was on December 6, 1973.

On page 8, of the Government's Brief, it states; 'After Rizzo told the District Court that he had discussed the case with his attorney, Mr. Epstein stated that his discussions with the prosecutor and his review of Government tape recordings had satisfied him that there was no reason for the Court not to accept Rizzo's plea of guilty.(Tr.8-9) The true statement made by Mr. Epstein as shown from the Record is, "Your Honor, from my conversations with Mr. Padget, from the tapes which I have heard in this case, no, Your Honor. I think that there is sufficient evidence at this time to require this case to go to a jury for its consideration."

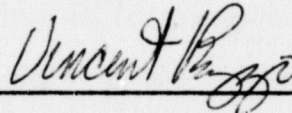
In the Government's Argument, on page 10, "Rizzo unequivocally responded that he understood his role in Count Three as it was described to him by the District Court" (Tr. 4) The Record shows that to Judge Duffy's question, "Do you understand what the nature of the charge you are pleading to is sir?" Petitioner's answer was simply, "I understand my role in that, your Honor.

On page 12, of the Government's Brief, the Government stresses the petitioner had knowledge that the loans were of a ~~usurious~~ nature. The Record will show that petitioner did not know the legal rates or the illegal rates which would reflect a usurious loan. See page 5, of the plea which states as follows; " My role in it was the role of getting monies for Mr. Calamaras. Besides my own money, I got him other monies. Interest was paid on monies, the rate of interest, I DON'T KNOW THE LAW AS FAR AS THE SHYLOCKING IS CONCERNED, but interest was paid on this money. It was above the interest of a bank of 8 percent or whatever the bank rate is."

Petitioner urges this Honorable Court's attention to page 5, of the minuets of the plea, in order to establish the fact that the "dear Friend" was in fact Mr. Calamaras, not the petitioner as implied in the Government's Brief on page 12.

This petitioner will rely on the inextinguishable truth which dominates the Record of the plea, therefore, this petitioner brings the attention of this Honorable Court to the enlightenment that is reflected by the logical and rational statements made at that time which simply impinge with an ungovernable force reflecting the sincerity and innocence of this petitioner at the time of his plea and thereafter.

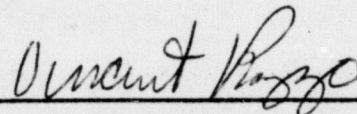
Respectfully submitted,



Vincent Rizzo, Appellant.

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, hereby certify that I am the appellant in the foregoing case No. 74-2532, and that I have mailed the Original plus two copies of this REPLY to the Clerk of the Court, United States Court of Appeals, for the Second Circuit, New York, New York. By mailing them Certified Mail, Return Receipt Requested on this day 21, April, 1975.



Vincent Rizzo, Appellant.